

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 19-CR-67
)	Green Bay, Wisconsin
vs.)	
)	February 10, 2020
XENGXAI YANG,)	10:33 a.m.
)	
Defendant.)	
)	

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE WILLIAM C. GRIESBACH
UNITED STATES SENIOR DISTRICT JUDGE

APPEARANCES:

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Proceedings recorded by electronic recording,
transcript produced by computer aided transcription.

TRANSCRIPT OF PROCEEDINGS

Transcribed From Audio Recording

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THE CLERK: The Court calls Case No. 19-CR-67, United States of America v. Xengxai Yang, for status conference. May I have the appearances please.

MR. MAIER: Good morning, Your Honor. Andrew Maier for the United States.

THE COURT: Good morning.

MR. MUSOLF: Kevin Musolf appears on behalf of Xengxai Yang, who is present.

THE COURT: Good morning.

PROBATION AGENT: Brian Koehler on behalf of US Probation.

THE COURT: Good morning all. I put this on the calendar in response to Mr. Yang's letter that was filed it looks like on February 6th stating that he wanted to withdraw his -- Well, he wanted a different attorney, correct? He wants further investigation of the insanity defense. Did you want to withdraw your plea and pursue that defense, Mr. Yang? Is that what you're telling me? Did you want to withdraw your plea of guilty to this charge? This is set for sentencing, right?

MR. MAIER: Yes, Your Honor.

THE COURT: Did you want to withdraw your plea and have a new attorney?

1 DEFENDANT: Yes.

2 THE COURT: Pull the microphone up okay. Mr. Musolf,
3 any comment on this? He says he never saw the report.

4 MR. MUSOLF: Your Honor, I guess I don't know if it is
5 a right, but I guess he has the ability to request the Court for
6 new counsel. I did review the report with him, but I did not
7 give him a copy. I was concerned about him having a copy of the
8 report because it contains confidential information and having
9 that in the jail. He is correct on that. He is correct on that
10 report, he has not received a copy of the report.

11 I did review the report with him and its contents.
12 However, like I said, if he wishes to have different counsel and
13 move to withdraw his plea potentially, I don't object to that.

14 THE COURT: You were retained by family?

15 MR. MUSOLF: I was.

16 THE COURT: I take it he is eligible for appointment
17 through the Federal Defender?

18 MR. MUSOLF: I assume. He is not employed and has
19 been in custody.

20 THE COURT: Mr. Koehler.

21 PROBATION AGENT: I assume so, Your Honor.

22 THE COURT: Mr. Maier.

23 MR. MAIER: On the first part of this, I don't really
24 have a position to take. If he wants a different attorney, I
25 think he can do it.

1 THE COURT: There hasn't -- The attorney would go
2 over the possibility whether there are grounds to withdraw the
3 plea and whether the assertion of the insanity defense would
4 make sense, but is there a basis for it?

5 MR. MAIER: Right. I guess what I ask is we leave the
6 sentencing date as is for now. Even if there's a new attorney
7 retained or appointed, it shouldn't take really all that long on
8 this case to get up to speed to do a sentencing.

9 THE COURT: Okay. Mr. Yang, Mr. Musolf, I mean it is
10 not like it's just up to him. We don't -- We don't readily
11 allow counsel allow a guy to shift counsel and then appoint
12 another one.

13 But do you think that based upon our conversations and
14 the motion itself that it is now going to be difficult for you
15 to have this trust and proceed and given the difficulties
16 reflected in the -- in the report that was done?

17 DEFENDANT: Yeah.

18 MR. MUSOLF: In the letter that was presented, it
19 certainly appears he doesn't have confidence in my ability. I
20 think the Court should grant the motion and allow me to
21 withdraw. I will forward the file to new counsel if that's what
22 the Court ultimately does.

23 THE COURT: Okay. Mr. Yang, anything else you want to
24 say? Has someone been helping you, someone in the jail or
25 family?

1 DEFENDANT: Yeah, I explained to them what was going
2 on, and he helped me write the letter.

3 THE COURT: Okay. Well, I'm going to grant the
4 motion. I think that this is a little bit of an unusual case.
5 I know that during the plea colloquy, Mr. Yang talked of video
6 games, and this is a very bizarre case. And I think given the
7 limitations addressed in the report that was prepared by
8 Dr. Berney, I think that it would probably be better to grant
9 the motion at this point.

10 This is not to say that Mr. Musolf has failed in any
11 respect, but I think there's a lack of trust here in part due to
12 the limitations and the unusual facts of the case that it makes
13 sense to grant that motion, so I'll allow Mr. Musolf to
14 withdraw. I'll direct the appointment of counsel for Mr. Yang.
15 We'll keep the sentencing date on. Mr. Musolf should make sure
16 that the new attorney as soon as he becomes aware of who that is
17 gets the file. And then Mr. Yang, your new attorney will talk
18 to you, look at the reports, go over things with you, and he'll
19 make recommendations or she will make recommendations, and then
20 we'll go from there.

21 If they agree with you that there are grounds to
22 withdraw a plea, they may file such a motion. If they think
23 there grounds to assert an insanity defense, they may do that,
24 but that attorney will make those initial determinations after
25 fully discussing the case with you. Do you understand that?

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DEFENDANT: Yeah.

THE COURT: Anything further we should do today then?

MR. MAIER: No. Thank you.

MR. MUSOLF: No.

THE COURT: Thank you all.

(Whereupon proceeding was concluded.)

C E R T I F I C A T E

I, SUSAN ARMBRUSTER, RMR, Official Court Reporter and Transcriptionist for the United States District Court for the Eastern District of Wisconsin, do hereby certify that the foregoing pages are a true and accurate transcription of the audio file provided in the aforementioned matter to the best of my skill and ability.

Signed and Certified November 19, 2021.

/s/Susan Armbruster

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